

# EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-99000-smb

4 - - - - - x

5 In the Matter of:

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7 ADMINISTRATIVE CASE RE: 08-01789 (SECURITIES INVEST-

8 ADVERSARY PROCEEDING) ,

9

10 Debtor.

11 - - - - - x

12

13 Adv. Case No. 10-04995-smb

14 - - - - - x

15 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

16 MADOFF INVESTMENT SECURITIES LLC,

17 Plaintiff,

18 v.

19 TRUST u/art FOURTH o/w/o ISRAEL WILENITZ,

20 Defendants.

21 - - - - - x

22

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24

25

1 Adv. Case No. 10-05184-smb

2 - - - - - x

3 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

4 MADOFF INVESTMENT SECURITIES LLC,

5 Plaintiff,

6 v.

7 LAURA ANN SMITH REVOCABLE LIVING TRUST et al,

8 Defendants.

9 - - - - - x

10

11 Adv. Case No. 10-04352-smb

12 - - - - - x

13 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

14 MADOFF INVESTMENT SECURITIES LLC,

15 Plaintiff,

16 v.

17 RAR ENTREPRENEURIAL FUND. LTD. et al.,

18 Defendants.

19 - - - - - x

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1 U.S. Bankruptcy Court

2 One Bowling Green

3 New York, NY 10004

4  
5 May 17, 2016

6 10:51 AM

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9 B E F O R E :

10 HON STUART M. BERNSTEIN

11 U.S. BANKRUPTCY JUDGE

12  
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14  
15 Hearing re: 10-04995-smb, 10-05184-smb, 10-04352-smb The  
16 Trustee's Request For Leave To File A Motion For a  
17 Protective Order in Wilentiz.

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21  
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23  
24  
25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

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20 Attorney for Defendants

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24 BY: HELEN DAVIS CHAITMAN, ESQ.

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1 ALSO PRESENT TELEPHONICALLY:

2 KEVIN H. BELL

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1 Wilenitz matter, but a copy of that report has been served  
2 to Ms. Chaitman on behalf of some of her other clients in  
3 different proceedings. And in Section 4C of the procedures  
4 order, that permits the Trustee to handle the voluminous  
5 nature of discovery that's potentially relevant in this case  
6 in that fashion.

7 THE COURT: Well, does Ms. Chaitman or any other -  
8 - clients or any other defendant have the ability to look at  
9 the same documents that your expert looked at and draw their  
10 own conclusions?

11 MR. JACOBS: Absolutely. Every single document --  
12 what we've endeavored to do, Your Honor, is that what we  
13 refer to as Electronic Data Room 1 contains all of the  
14 underlying documents considered by Mr. Dubinsky and we're  
15 also building upon that in including documents that our  
16 other experts who we may offer to prove transactions and who  
17 do other functions, all of those documents as well. So,  
18 that's approximately 4 million records. Not pages, but  
19 records.

20 And it's an enormous amount of data that I believe  
21 is unprecedented, at least in my career, and for that reason  
22 we've structured the data room in a very organized fashion  
23 with issue trees. So if you're a participant who's  
24 accessing the data room, you'll see something that you might  
25 be familiar with already in terms of like, an Outlook email

1 folder tree that has topics, broken down documents,  
2 financials, third party records; and then each of those  
3 trees can be broken down further to drill down to J.P.  
4 Morgan statements. You know, Chicago Options Trading  
5 information, Depository Trust Clearing Corporation  
6 documents; all of those types of things. It's also  
7 searchable.

8 So, absolutely the Defendant has the ability to  
9 conduct whatever investigation they believe is relevant to  
10 the claims of their defenses, the same that our expert did,  
11 and they have access to all the same information that our  
12 expert did. And we did that to be transparent and to  
13 provide any data that any litigant believes that they should  
14 have access to.

15 So, that's the starting point of where we are in  
16 discovery. And then because Section 4C of the procedures  
17 order allows us to provide a summary report, we do that.  
18 And Mr. Dubinsky painstakingly analyzes the Ponzi scheme and  
19 the IA business specifically, but also the other aspects of  
20 BLMIS's businesses as well. And issues of insolvency are  
21 also part of his analysis to the extent they may bear on the  
22 Ponzi scheme or on other proofs we may have, or have had at  
23 some point in our cases.

24 But all of the financials are considered, the  
25 Ponzi scheme is considered, the stock-trading activity or



1 And that involves transfers that occurred long before the  
2 two-year period. Were there transfers from other accounts  
3 in this case? Interaccount transfers?

4 MR. JACOBS: There were interaccount transfers in  
5 this case, Your Honor.

6 THE COURT: All right. You would have to prove  
7 that the Trustee -- or those account transfers were  
8 correctly computed.

9 MR. JACOBS: From a net equity perspective, we  
10 absolutely agree, yes.

11 THE COURT: Yeah. So, all I'm saying is although  
12 the claim only reaches back two years, you still have to  
13 compute whether you call it net equity or fictitious  
14 profits, that still has to be demonstrated so that you know  
15 the scope of the liability.

16 MR. JACOBS: That's correct, Your Honor. And as  
17 you may recall from the (indiscernible) trial, we submit  
18 experts whose specific function is to do that.

19 THE COURT: Okay, but the Defendants are entitled  
20 to see the data --

21 MR. JACOBS: That's absolutely right. And we have  
22 already produced in this litigation, without even having  
23 received a document request, 100 percent of that data. So  
24 the Defendants have all of those records that we intend to  
25 rely upon in order to prove both the net equity and to trace

1 the transfers.

2 THE COURT: So, you produce the records of other  
3 accounts, for instance, the transferor accounts?

4 MR. JACOBS: We do, Your Honor. We call that our  
5 initial disclosure production. In every case where there's  
6 an interaccount transfer, we replicate our production of the  
7 CADs, which I described earlier, for any related accounts.  
8 And by related accounts, to be clear, in our mind that means  
9 any account that transferred money to the sued upon account.  
10 We do provide all of that documentation.

11 And also, the only additional possible discovery  
12 that I believe would be relevant to the issues of transfers  
13 and net equity are the Defendants' own bank records. And as  
14 Your Honor I know is aware, this Defendant in addition to  
15 others, have vigorously contested our right to those  
16 documents. The Court has rejected those objections. That's  
17 no longer an issue in this case, although I think we're  
18 going to be talking about that in some others again later.

19 But in any event, our position is that the bank  
20 records have limited utility. Our experts will submit  
21 reports that detail exactly why BLMIS's books and records  
22 are accurate and reliable for the cash activity, transaction  
23 activity for every relevant account over the life of the  
24 account. Those reports have not yet been submitted but I  
25 can promise the Defendant and the Court that they will be

1 us to prematurely provide our report, we will provide our  
2 report. Ms. Chaitman will have an opportunity to consider  
3 all of the records our expert considers. She'll have an  
4 opportunity to depose Mr. Dubinsky, although she hasn't yet  
5 deposed him in any other case. And at a minimum, the  
6 Defendants should have to start with the voluminous  
7 discovery we've already provided before more is demanded.  
8 And I think that is a principle that is expressly baked into  
9 Rule 26, particularly in light of the recent amendment,  
10 where the purpose of the amendment is to ensure that  
11 litigants don't get to engage in endless and abuse of  
12 discovery. And I think that that request falls into that  
13 category of needless abuse of discovery, particularly given  
14 everything we've already provided.

15 The same is true within that group of requests --  
16 there are several requests that ask for stock trading  
17 records for the market-making side of the business, and the  
18 proprietary trading side of the business, and the IA side of  
19 the business. However, our contention is there were no  
20 stocks ever traded for any IA investment advisory customer.  
21 And that request asks for that documentation going back to,  
22 I believe, 1982.

23 Your Honor, the Wilenitz accounts were opened in  
24 2003, so how can any stock trading activity for any part of  
25 the business, however unconnected it may be to this

1 THE COURT: And, again, this comes back to my  
2 understanding of the records. If you have tables of content  
3 or indices...

4 MR. JACOBS: I do.

5 THE COURT: I don't want to see them now.

6 MR. JACOBS: Okay.

7 THE COURT: If you have those things and somebody  
8 can look at them and see the subject matter of what they  
9 want to look at, figure out what to look at, fine.

10 MR. JACOBS: There is a subfolder in Data Room 1  
11 that is called DTC that has all of those records.

12 MS. CHAITMAN: I'm not asking for -- I have the  
13 DTC records.

14 THE COURT: She wants other non-DTC records.

15 MR. JACOBS: To the extent we have them in  
16 addition to publicly available information that we obtain,  
17 it's all in the data room clearly labeled.

18 THE COURT: You'll have to show me when the time  
19 comes. 17 -- these are the number of employees that work  
20 for each unit.

21 MR. JACOBS: Yes, Your Honor. And as I had  
22 mentioned before, we provided a specific chart that contains  
23 this exact information, even though I believe we're not  
24 obligated to because it had already been made available in  
25 the data room and could've been found with the click of a

1 BLMIS bought 100 shares of IBM and 50 shares show up on  
2 Wilenitz.

3 MR. JACOBS: Right.

4 THE COURT: Who's to say he didn't actually own  
5 that stock?

6 MR. JACOBS: I would love to be able to --

7 THE COURT: Which I guess would be relevant to his  
8 net equity claim or his claim in the SIRA case.

9 MR. JACOBS: I wish I could give you a  
10 satisfactory answer but in the time that we have today, I  
11 can't replicate the report of our expert, which, in  
12 painstaking detail goes through all of the reasons why we  
13 believe there was never a security traded in connection with  
14 the fraudulent Ponzi scheme being operated and the IA  
15 business.

16 THE COURT: So, how does she test that conclusion?

17 MR. JACOBS: She tests that conclusion the same  
18 way our expert does, by examining the underlying records.  
19 All of those records again have been made available to Ms.  
20 Chaitman. They're in the data room. Those other records  
21 are expert reports.

22 THE COURT: Maybe that's the answer. If there are  
23 records -- because they do have the DTC records, at least  
24 from the period when Wilenitz was investing. If the records  
25 show that BLMIS actually owned something, and the same stock

1 shows up in Wilenitz's account statement, you can make the  
2 argument that he actually owned that stock. But you can do  
3 that (indiscernible) and the information has been made  
4 available to you.

5 And the sense I'm getting -- and I understand that  
6 it's a lot of work -- is you want the Trustee to do this for  
7 you, but you're going to have to do this yourself if this  
8 stuff is available.

9 MS. CHAITMAN: You know, Judge, with 4 million  
10 pages of documents, the least the Trustee could do is  
11 specify the specific Bates Numbers. Because I don't want to  
12 be in a position where we go to trial... I mean, for all I  
13 know, the data room is updated constantly and new documents  
14 are added. How am I going to prove at trial that certain  
15 documents were not made available to me? I mean, it's  
16 impossible. Why can't the Trustee be bound to tell me these  
17 are the documents responsive to this request?

18 THE COURT: But that doesn't solve your problem...  
19 Well, if the Trustee has additional documents, he's got to  
20 supplement the disclosure or the production, which he does  
21 by adding them to the data room, and maybe you have a  
22 continuing duty to check the data room.

23 But part of the problem is you've thrown such a  
24 broad net over what you're looking for, instead of the  
25 specific documents relevant -- that I think seem to be

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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